*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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+ W.P.No.22676 OF 1999

% Dated -06-2006

T. Premchandra Rao

…. Petitioner

Vs.

$ B. Pramod, General Manager (Plg&Dev.), Sydicate bank, Manipal –576119 and two others.

…. Respondents

! Counsel for the Petitioner: Mr. J.Sudheer

^ Counsel for the Respondents: Mr.T.Gopalakrishna

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? Cases referred

[1] 1998(2) ALT 598
2 AIR 1970 SC 1255
3 AIR 1997 SC 2148
4 1998(6) Supreme 587= AIR 1998 SC 3038
5 1991(1) LLJ 130
6 1998(1) ALT 501
7 AIR 1964 SC 364
8 AIR 1972 SC 2535
9 AIR 1972 SC 330
10 1996(2) ALD 1160
11 1996(3) ALD 163
12 1998(2) LLJ 511
13 (2005) 3 SCC 241
14 (2003) 3 SCC 583
15 1967(2) LLJ 715
16 1971 (1) LLJ 83
17 1978(1) LLJ 443
18 1996(3) SCC 364
19 AIR 1974 SC 1596
20 AIR 1976 SC 2547
21 AIR 1989 SC 1933
22 2002(4) SCC 234
23 1966 M.P.L.J. 26
24 1969 NSC 186

25 AIR 1965 SC 155
26 AIR 1984 SC 289
27 1969 (2) SCC 372
28 1981(II) ALT 455
29 AIR 1954 SC 51
30 AIR 1991 SC 1260
31 AIR 1974 SC 555
32 AIR 1977 SC 567
33 AIR 1987 SC 2043
34 (1990) 4 SCC 594
35 AIR 1977 SC 1512
36 AIR 1982 SC 673
37 AIR 1963 SC 779
38 AIR 1969 SC 966

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.22676 of 1999

JUDGMENT:

This writ petition is filed, seeking to have the orders passed by the 2nd respondent - disciplinary authority in compulsorily retiring the petitioner from service, vide proceedings dated 15.4.1999, as confirmed by the 1st respondent-appellate authority, vide proceedings dated 23.8.1999, quashed.

2. Brief facts, to the extent necessary, are that the petitioner joined the service of the respondent – bank on 06.01.1977. While he was working as a clerk, at the Kothapeta branch of the respondent bank, he was served charge sheet, dated 13.06.1998, by the disciplinary authority, on 27.06.1998, for gross misconduct of "doing acts prejudicial to the interest of the bank" under clause 19.5(j) of the bipartite settlement. The petitioner was asked to submit his written statement of defence within 15 days. The petitioner, vide letter dated 03.09.1998, sought for certain documents, receipt of which was acknowledged by the 2nd respondent on 06.09.1998. The petitioner was informed, vide letter dated 4.9.1998, that since he had failed to submit his explanation, the disciplinary authority had ordered for an enquiry and that an enquiry officer was being appointed. Petitioner would contend that since, along with the charge sheet, no list of documents and witnesses was supplied, to enable him to submit his reply to the charge sheet, the action of the respondents in appointing an enquiry officer was illegal. On being advised, to obtain the documents he had sought for from the enquiry officer, the

petitioner in his letter dated 12.10.1998 is said to have pointed out the lapses on the part of the respondents in not furnishing him the list of documents. In response thereto the 2nd respondent informed him, vide letter dated 14.10.1998, that an enquiry had already been ordered on 3.09.1998 and the same had been communicated to the petitioner on 04.09.1998. Petitioner would contend that he is entitled, as of right, to have the list of documents and list of witnesses forwarded along with the charge sheet to enable him to prepare for his defence and to submit his written statement of defence and that non-supply thereof would render the charge sheet vague and incomplete thereby denying reasonable opportunity of defending himself.

3. The 3rd respondent, vide letter dated 03.10.1998, informed the petitioner that the first date of enquiry had been fixed on 26.10.1998 and that, in accordance with clause 19.12(a) of the bipartite settlement, the petitioner should participate in the enquiry along with his defence representative. The petitioner is said to have participated in the enquiry on 26.10.1998 along with his defence representative and to have informed the 3rd respondent that he had not yet submitted his reply to the charge sheet, inasmuch as the list of documents and witnesses had not been furnished to him. The management representative, vide letter dated 26.10.1998, supplied the list of documents and witnesses along with copies of documents which formed part of the enquiry. The petitioner's defence representative requested the 3rd respondent to adjourn the enquiry to a later date to enable them to go through the documents and prepare for their defence and for effective cross-examination of the management witness. The 3rd

respondent, without accepting the petitioner's request, is said to have proceeded further in the matter and to have ordered the management representative to lead his evidence. Petitioner would contend that the enquiry officer should have adjourned the enquiry, by giving him three clear days time, to prepare himself and to verify the documents furnished to him at the commencement of the enquiry held on 26.10.1998. Petitioner would submit that the examination in chief, of the sole witness on behalf of the management, was completed on 26.10.1998 and, after repeated requests, the proceedings were adjourned to the next day i.e., 27.10.1998. Petitioner would attribute bias to the enquiry officer.

Petitioner would rely on **A. Sadanand v. Syndicate Bank**[1]. During the course of enquiry the bank examined Sri S.V.H.V. Sharma, the vigilance Officer, who conducted the preliminary investigation in the matter, as their sole witness who deposed at length about the allegations made in the charge sheet and marked all management documents. Petitioner would contend that the investigation officer is not a material witness and that no case can be decided on the basis of his evidence alone, inasmuch as he has no personal knowledge of the matter in issue and that he merely collects all information from the documents and witnesses he had examined which cannot be treated as direct evidence. Petitioner would contend that, in his case, no direct witness was examined. Petitioner would submit that when the investigating officer himself appeared as a witness during the enquiry, to explain certain points, refusal by the enquiry officer to permit the petitioner to inspect the preliminary enquiry report was in violation of the rules of natural justice, as he was denied reasonable

opportunity of defending himself. Reliance is placed on **State of Assam v. Mahendra Kumar Das**[2] in this regard.

3. The 2nd respondent disciplinary authority, vide letter dated 04.03.1999, forwarded to the petitioner a copy of the enquiry officer's report dated 30.01.1999 wherein the petitioner was held guilty of the charges. The petitioner, vide letter dated 18.03.1999, submitted his objections to the enquiry officer's report. According to the petitioner the 2nd respondent, without considering the objections raised by him, concurred with the enquiry officer's report, and held that the enquiry officer had given the petitioner reasonable opportunity and had followed the prescribed procedure in consonance with principles of natural justice. The petitioner was issued show cause notice, dated 27.03.1999, proposing to impose punishment of compulsory retirement. Thereafter a personal hearing was afforded and the petitioner, along with his defence representative, appeared before the disciplinary authority on 06.04.1999. The 2nd respondent passed final orders, vide proceedings dated 10.04.1999, confirming the punishment of compulsory retirement.

4. The petitioner preferred an appeal, to the General Manager (Personnel) – appellate authority, vide letter dated 01.06.1999. The petitioner was informed, vide letter dated 09.06.1999, to appear before the General Manager (Personnel) on 03.07.1999 for personal hearing. The petitioner, vide letter dated 21.06.1999, requested the Chairman & Managing Director to change the appellate authority as he was the person who had issued the charge sheet when he was the disciplinary authority. Consequent thereto, the petitioner was asked to appear before the changed

appellate authority i.e., General Manager (Planning and Development) and accordingly the petitioner appeared before the 1st respondent on 03.07.1999. The 1st respondent, vide proceedings dated 23.08.1999, dismissed the petitioner's appeal, concurred with the decision of the 2nd respondent and confirmed the order of compulsory retirement from service. Petitioner would contend that the action of the 2nd respondent was premeditated in as much as the bank had already issued circular dated 22.07.1999 informing all the branches about his compulsory retirement from service.

5. In the Counter affidavit, filed on behalf of respondents 1 to 3, it is stated that since the petitioner is a workman he has an effective and efficacious alternative remedy under the provisions of the Industrial Disputes Act. Respondents, while denying that the appellate authority had dismissed the petitioner's appeal in a cryptic manner, would state that the 1st respondent, vide proceedings dated 23.08.1999, had considered all the petitioner's contentions judiciously, found no extenuating circumstances warranting reconsideration of the order of the disciplinary authority, had assessed the punishment awarded by the disciplinary and found it to be proportionate to the gravity of misconduct and had thereafter, while dismissing the appeal, confirmed the punishment awarded. With regards the earlier service record of the petitioner, it is stated that an unblemished record does not entitle the petitioner to commit fraud or to claim immunity against being punished. It is stated that despite being given 15 days time, to give reply to the charge sheet, the petitioner did not respond thereto before 12.07.1998, but later on 24.07.1998

had sought 30 days time to submit his reply to the charge sheet. Even within this extended period of 30 days, the petitioner did not furnish his reply to the charge sheet and, instead, on 02.09.1998 had sought for a list of documents and witnesses. Respondents would allege that this request, for being supplied the list of witnesses and documents, was dilatory, that diversionary tactics had been adopted by the petitioner and that, in the absence of an explanation to the charge sheet, the disciplinary authority had decided, vide letter dated 04.09.1998, to hold an enquiry. Respondents would state that the petitioner's letter dated 03.09.1998, seeking a list of documents and witnesses, was received after the decision had been taken by the disciplinary authority on 04.09.1998 to order for a domestic enquiry and as such the petitioner was advised accordingly by the disciplinary authority. It is stated that the petitioner had renewed his request for being issued a list of documents, vide letter dated 12.10.1998, and he was advised, vide letter dated 14.10.1998, to attend the enquiry and obtain the list of witnesses and documents. It is stated that the petitioner was provided all the required material in the first sitting of the enquiry itself on 26.10.1998 and that no prejudice had been caused to the petitioner in this regard. Respondents would contend that ordering of an enquiry is not an end but a means for reaching the end and the disciplinary authority had no option but to order for the domestic enquiry, to ascertain the truth of the allegations leveled in the charge sheet, in the absence of petitioner's written reply. It is stated that the enquiry officer had provided ample opportunity to the petitioner to defend his case and that the opportunity given to him by the enquiry officer was availed by the petitioner who participated during the

enquiry and defended his case effectively. It is contended that, even before the enquiry officer, the petitioner had not stated as to how prejudice had been caused to him in this regard. Respondents would deny the allegations of malafides and bias against the enquiry officer and the disciplinary authority. They would state that they had waited for nearly two months, after the charge sheet was issued, for the petitioner to submit his reply thereto and it is only thereafter that the disciplinary authority had ordered for an enquiry. Respondents would state that the petitioner, having failed to submit his explanation to the charge sheet cannot contend, more so in the absence of any specific provision in this regard, that failure to furnish the list of witnesses and documents, prior to the commencement of the enquiry, had caused him prejudice and had denied him the opportunity of submitting his reply to the charge sheet. Respondents would contend that the petitioner had participated in the enquiry, had availed the opportunity afforded to him, had cross-examined the management witness at length and had adduced evidence in his defence. It is stated that the 3rd respondent informed the petitioner, vide letter dated 03.10.1998, that the enquiry was fixed on 26.10.1998. On 26.10.1998 the petitioner is said to have appeared before the enquiry officer, along with his defence representative, and to have stated that he understood the contents of the charge sheet and the procedure for conducting the enquiry. On being asked as to whether he admitted or denied the charges, the petitioner stated that the charge sheet was vague, that the list of witnesses was not furnished to him, and that appointment of the enquiry officer was hasty and manifested prejudice. It is stated that the management witness was examined in the forenoon and was exposed for cross-examination in the post

lunch session of 26.10.1998. The petitioner and his defence representative requested that the enquiry proceedings be adjourned to enable them to have an opportunity to go through the documents and that a copy of the investigation report be furnished. The enquiry officer held that the petitioner's request for a copy of the investigation report was uncalled for since the management witness had deposed on the basis of the documents in the enquiry. With regards the petitioner's request to be provided an opportunity to go through the documents, the enquiry officer adjourned the enquiry to the next day to enable the petitioner to come prepared. On 27.10.1998 the petitioner commenced cross-examination of the management witness and concluded the examination raising 22 cross-examination questions in the forenoon itself and the management had closed their evidence thereafter. The petitioner sought an adjournment to adduce evidence in his defence. His request was acceded to and the enquiry date was fixed for 16.11.1998 to enable the petitioner to come prepared for leading his evidence. The petitioner is said to have examined himself in his defence and to have closed his side of the enquiry. Respondents would contend that non-furnishing of a reply to the charge sheet did not preclude the enquiry officer from commencing the enquiry on 26.10.1998. Respondents would deny that adequate opportunity was not given to the petitioner to defend himself or that the enquiry was an empty formality. Respondents would state that the petitioner was given nearly 20 days to lead evidence in his defence and that the very commencement of the enquiry on 26.10.1998, and its adjournment to 16.11.1998, was only after adequate notice was given to the

petitioner. Allegations of bias and malafides are denied. Respondents would state that the rules do not mandate adjournment of three clear days and the petitioner's contention to the contrary was erroneous. Respondents would contend that since the investigating officer's report had not been relied upon, in the enquiry, failure to furnish the petitioner a copy thereof would not amount to denial of reasonable opportunity more so when the Investigating Officer had himself appeared before the enquiry officer as a management witness and was subjected to cross-examination by the petitioner/ his defence representative. Respondents would rely on **Narayan Dattatraya Ramteerthakhar v. State of Maharashtra**[3] in this regard. It is stated that, on conclusion of the domestic enquiry on 16.11.1998, both the parties were asked to submit their written briefs within 15 days, and they had submitted their written briefs on 23.11.1998. The enquiry officer submitted his report to the disciplinary authority on 30.01.1999 holding that the charges levelled against the petitioner, of acting prejudicial to the interest of the bank, vide clause 19.5 (j) of the bipartite settlement, had been established, and a copy thereof was forwarded to the petitioner under cover of letter dated 04.03.1999 asking him to make his submissions, if any, on the findings within 15 days of receipt of the letter. The defence representative, on behalf of the petitioner, furnished submissions on the findings of the enquiry officer, in his letter dated 18.03.1999. It is stated that the disciplinary authority disagreed with the petitioner's contention that the findings of the enquiry officer were perverse and was not based on evidence. The disciplinary authority agreed with the findings of the enquiry officer and held

the petitioner guilty of the charges levelled against him and, vide order dated 27.03.1999, dealt with the various contentions raised by the petitioner, considered the gravity of the misconduct and then proposed imposition of punishment of compulsory retirement from service. The petitioner was permitted to make oral submissions in this regard on 06.04.1999. Respondents would state that, on 06.04.1999, the petitioner along with his defence representative appeared before the disciplinary authority and made oral submissions, and thereafter the disciplinary authority, in his proceedings dated 10.04.1999, confirmed the proposed punishment taking into account various aspects brought out by the petitioner during the personal hearing. The disciplinary authority observed that the matter raised by the petitioner had already been dealt with earlier by the enquiry officer, in the enquiry, and by the disciplinary authority at the stage of proposing the punishment. The petitioner's grievance regarding inadequate opportunity was rejected by the disciplinary authority. Respondents would state that each and every General Manager, individually, at the head office is empowered by the Chairman and Managing Director to be the appellate authority and hear and dispose of appeals against original orders passed by the disciplinary authority, in respect of workmen staff, as per clause 19.14 of the bipartite settlement. It is stated that the petitioner's appeal submitted to the General Manager (P) was disposed of, after the personal hearing, on 03.07.1999. It is stated that the appellate authority, in his order dated 23.08.1999, had assigned reasons as to why he was concurring with the decision of the disciplinary authority in confirming the punishment already awarded. While dismissing the appeal the appellate authority dealt with the contentions raised by

the petitioner and the submissions made by him during the personal hearing held on 03.07.1999. Respondents would deny the contention that the appellate authority had passed the order without considering any of the facts mentioned by the petitioner during the personal hearing. Respondents also deny that the appellate authority had passed a cryptic order without application of mind. It is stated that the bank, in its circular dated 22.07.1999, gave details of employees who had been dismissed/terminated/discharged and compulsorily retired from service during the period 01.03.1999 to 30.04.1999 and since the petitioner was compulsorily retired from service, with effect from 23.04.1999, this circular only took note of this factual position. Respondents would state that the enquiry officer's report and the order of the disciplinary authority were in conformity with the rules, procedure and principles of natural justice and were passed with due application of mind.

6. In his reply affidavit, the petitioner would state that the punishment imposed by the respondents is required to be set aside on the ground that the findings recorded by the enquiry officer are based on no evidence. Petitioner denies that the alternative remedy is effective and efficacious and would submit that mere existence of an alternative remedy is not a bar for exercise of jurisdiction under Article 226 of the Constitution of India. Petitioner would state that the sole witness examined on behalf of the management was the investigating officer and his entire deposition was false. Petitioner would refer to the admission of the investigating officer that he did not contact the Branch Manager and did not obtain any kind of statement from him. Petitioner would state that though this fact was brought to the

notice of the 1st respondent in his appeal, the said contention was not considered and that the order of the appellate authority is not a speaking order. Petitioner would rely on **State of Uttar Pradesh v. Shatrughan Lal**[4]. Petitioner would state that, even in the absence of any specific rules, principles of natural justice would require that a list of documents and witnesses be provided to the delinquent employee. Petitioner would contend that where an investigating officer is cited as a witness, the delinquent employee has the right to have a copy of the investigating officer's report to cross-examine him and failure to provide a copy thereof had resulted in denial of reasonable opportunity.

7. Petitioner would seek to have the disciplinary proceedings, culminating in the order of punishment of compulsory retirement, quashed on the following grounds:

1) Issuance of the charge sheet without enclosing the list of documents and the list of witnesses thereto and failure to supply the said documents, despite a specific request by the petitioner, resulted in his being denied reasonable opportunity of effectively preparing for his defence, to submit his written statement of defence and was, therefore, in violation of principles of natural justice.

2) Time granted, of just one day, for perusal of the list of documents and witnesses was grossly insufficient resulting in the petitioner being denied reasonable opportunity of cross-examining the management witness;

3) Since the sole witness examined, on behalf of the management, was the officer who conducted the preliminary enquiry, failure to furnish a copy of the

preliminary investigation report was in violation of principles of natural justice and vitiated the domestic enquiry proceedings;

4) Failure to produce any witness, other than the investigating officer, vitiated the enquiry, more so when the investigating officer admitted not to have even met the Branch Manager who, despite being the prime witness in the case, was not examined. The petitioner could not have been guilty based on the sole testimony of the investigating officer who was neither directly connected nor was he a witness to the incidents which form the basis on which the charge sheet was issued;

5) The findings of the enquiry officer are based on no evidence and are perverse;

6) The order of the disciplinary authority and the appellate authority suffer from non-application of mind, are cryptic orders and are bereft of reasons;

7) The procedure adopted by the respondent bank, in conducting the disciplinary proceedings, is contrary to the rules and the bipartite settlement.

8. In support of his contention that failure to furnish a copy of the preliminary enquiry report, where the investigating officer is examined as the witness, would vitiate the enquiry proceedings, Sri J. Sudheer, learned Counsel for the petitioner, would rely on a Division Bench judgment of the Orissa High Court in **Prafulla Chandra Behera Vs. Dena Bank**[5]**.** Learned Counsel would submit that since the officer who conducted the preliminary enquiry was the sole witness in the departmental enquiry and the

material collected by him alone formed the basis for the petitioner being held guilty of the charges, the respondents were duty bound to furnish a copy of the preliminary investigation report, and failure to do so vitiated the domestic enquiry. Learned Counsel would contend that failure to examine the then branch Manager, a material witness, vitiated the enquiry proceedings. According to the learned Counsel, since the very basis for holding the petitioner guilty of the charge was that he had received the registered letter in which the cheque had been sent for collection, and since it is the petitioner's case that he had handed over the cover intact to the branch manager, the respondents ought to have examined the branch manger to establish the truth or otherwise of the petitioner's contention. Learned Counsel would submit that the Branch Manager was a crucial witness and the person best suited to explain about the missing cheque, more so since the Vigilance Officer, who was examined as M.W-1, had admitted that he had not enquired from the then Branch Manager regarding the missing cheque. In support of his submission that failure to examine this crucial witness vitiated the enquiry, learned counsel would rely on **N. Subramanyam Vs. Chairman, Visakhapatnam Port Trust**[6]. Learned Counsel would submit that the findings of the enquiry Officer, that it had come on record that the petitioner had not handed over the cheque, was a perverse finding. Learned Counsel would submit that the enquiry officer could not eschew either the oral evidence of the petitioner or the evidence favourable to him while holding the petitioner guilty of the charges. Learned Counsel would state that the findings of the enquiry officer are based on no evidence and are perverse and would necessitate the petitioner

being held not guilty of the charges. Learned Counsel would submit that mere suspicion would not amount to proof even in domestic enquiries and would rely on **Union of India Vs. H.C. Goel**[7], **State of Assam Vs. Mohan Chandra Kalita**[8], **M/s. Bareilly Electricity Supply Co. Ltd Vs. The Workmen**[9], **S. Yesudas Vs. Chief General Manager-cum- Disciplinary Authority, SBI, Hyderabad**[10] and **N. Venkatarama Naidu Vs. Govt. of Andhra Pradesh rep. By its Secretary**[11].

9. Sri Rami Reddy, learned Counsel, appearing on behalf of Sri T. Gopalkrishna, learned Standing Counsel for the respondent bank, would submit that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, would not sit in appeal over the findings recorded by domestic tribunals nor would it re-appreciate the evidence on record or substitute its views for those of the disciplinary authority. Learned Counsel would submit that if, on the same set of facts, two views are possible and this Court were of the view that the one taken by the disciplinary authority, though a possible view, should have yielded to the other view, even then it would not, unlike a court of appeal, interfere in exercise of its jurisdiction under Article 226 of the Constitution of India. Learned Counsel would submit that the standard of proof, required to hold an employee guilty of the charges in a departmental enquiry, was preponderance of probabilities and not proof beyond reasonable doubt. Learned Counsel would submit that since the cover, which contained the cheque sent to the Gotlagutta Branch for collection, was received by the petitioner, the burden was on him to establish that he had handed over the

said cover to the Branch Manager. Learned Counsel would submit that, while strict rules of evidence may not be applicable to domestic enquiries, even under Section 106 of the Evidence Act, the burden of proving any fact, which is especially within his knowledge, is upon the petitioner. Learned Counsel would place reliance on **Canara Bank Vs. Union of India (Ministry of Labour)**[12] in this regard. Learned Counsel would also place reliance on **Cholan Roadways Ltd Vs. G. Thirugnanasambandam**[13] and **Lalit Popli Vs. Canara bank**[14]. Learned Counsel would place reliance on the judgment of the Supreme Court in SLP 3175 and 3176 of 2000 dated 19.03.2001 wherein the Supreme Court, while setting aside the order of the High Court, held that the High Court was not right in directing the bank to serve a copy of the preliminary enquiry report on the delinquent employee. Learned Standing Counsel would submit that the bank, in its circular 90/94/BC/PD/22/IRD dated 16.04.1994, had held that issuance/discounting of cheques by employees, without keeping sufficient balance in their account, was highly irregular and an unhealthy practice and that an employee of a financial institution dealing with public money should inspire confidence in the public and not give scope for such unhealthy practices. Employees were informed that the adverse impact, of such acts of employees, on the image of the Bank, was a matter of serious concern to all and that issuance of cheques, without maintenance of sufficient balance in their account and /or discounting of self drawn cheques at various branches, without keeping sufficient balance to meet such cheques, would be viewed very seriously and that the employees concerned would be

proceeded against departmentally and be liable for deterrent punishment under the provisions of the bipartite settlement.

10. Before examining the rival contentions, it is necessary to take note of the relevant provisions of the bipartite settlement which govern the procedure for conducting departmental enquiries against workmen staff of the respondent bank.

11. Clause 19.5 relates to “gross misconduct and reads thus:-

The expression “gross misconduct” shall mean any of the following acts and omissions on the part of an employee:

a. engaging in any trade or business outside the scope of his duties except with the written permission of the bank;
b. unauthorized disclosure of information regarding the affairs of the bank or any of its customers on any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;
c. drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank;
d. willful damage or attempt to cause damage to the property of the bank or any of its customers;
e. willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;
f. habitual doing of any act which amounts to “minor misconduct” as defined below, “habitual” meaning a course of action taken or persisted in notwithstanding that atleast on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;
g. willful slowing down in performance of work;
h. gambling or betting on the premises of the bank;
i. speculation in stocks, shares, securities or any commodity whether on his account or that of any other persons;
j. doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;
k. giving or taking a bribe or illegal gratification from a customer or an employee of the bank;
l. abetment or instigation of any of the acts or omissions above-mentioned.

12. Clause 19.11 and 19.12 prescribe the procedure for taking

disciplinary action against a workman and read thus:-

19.11. When it is decided to take any disciplinary action against an employee such decision shall be communicated to him within three days thereof.

19.12. The procedure in such cases shall be as follows:-

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation so also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witness and produce other evidence in his defence. He shall also be permitted to be defended-

i. (x) by a representative of a registered trade union or bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(Y) where the employee is not a member of any trade union of bank employees on which aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed:

OR

ii. at the request of the said union by a representative of the state federation or all India Organisation to which such union is affiliated;

OR

iii. with the Bank's permission, by a lawyer.

He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

(b) Pending such inquiry he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension; and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowance, etc.

(c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances, that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the "gross" type he may be merely discharged, with or without notice or on payment of a month's pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be

insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action."

13. It is also necessary to take note of the charges levelled against the petitioner and the basis on which the enquiry officer held him guilty of the charges.

14. The allegations levelled against the petitioner were that:-

1. while working as a Clerk at Gotlagattu branch of the respondent Bank, during the period between 25.08.1995 and 25.06.1997, the petitioner had issued cheque bearing No. 698839 dated 15.03.1997 for Rs.13,000/- in favour of M/s. Chunduri Chit Funds (Pvt) Ltd., drawn on his Savings Bank account No. 2871 maintained with the branch.
2. The petitioner was issued a cheque book on 31.03.1997 containing 10 leaves bearing No. 699721 to 699730.
3. The petitioner, however, issued cheque No. 698839 which formed part of the cheque book issued to one Sri Y. Thirupathi Reddy, whose S.B. account No. was 71. On the demise of Sri Y. Thirupathi Reddy, his S.B. account No. 71 was closed and the balance amount lying in his savings account was paid to his legal heirs on 07.03.1995 when the unused cheque leaves from 698833 to 698840 were surrendered.
4. On 15.03.1997, the date on which the petitioner issued the cheque for Rs.13,000/-, the balance in his savings bank account No. 2871 was Rs.2.02.
5. This cheque was forwarded to the Gotlagattu branch, by the Bank of Baroda, Ongole, for collection vide reference in

OBC 1596 by registered post No. 1252 dated 29.03.1997 which was delivered at the branch on 31.03.1997.

6. On 31.03.1997, the petitioner was functioning as a temporary Special Assistant in the absence of the Manager and was also incharge of the branch. The registered letter, in which the cheque was sent, was received by the petitioner.

7. On 31.03.1997, the date on which the cheque was presented for collection by the Bank of Baroda, the balance in the petitioner's savings bank account was Rs.81.06 only and as such the cheque amount of Rs.13,000/- could not have been debited to his S.B. account, and would have been required to be returned without payment.

15. The charge sheet also takes note of the fact the petitioner was subsequently transferred to Kothapatnam branch on 17.06.1997, that pursuant to a reminder, from the Bank of Baroda, the Manager of Gotlagattu branch informed the petitioner, vide letter dated 15/19.07.1997, that on receiving the telegram from the Bank of Baroda, Ongole on 08.05.1997, enquiring about the fate of the cheque for Rs.13,000/-, the then Manager had enquired from the petitioner about the missing cheque and that the petitioner had informed him that no such cover/instrument had been received and on the basis of the petitioner's statement, the Bank of Baroda was informed accordingly. After enquiry with the postal authorities, the Bank of Baroda had informed the Gotlagattu branch of the respondent bank that it was the petitioner who had acknowledged having received the envelope sent by registered post on 31.03.1997. The petitioner, vide letter dated 20.08.1997, informed that it may be a fact that the said registered cover was received

by him, but its contents were not known to him since the cover was handed over to the Manager intact without opening. The petitioner also informed that he had issued a blank signed cheque to M/s. Chunduri Chit Funds (Pvt) Ltd and promised to settle the matter by remitting Rs.13,500/- to the credit of his S.B. account and requested the branch Manager to inform him as to how to resolve the issue if the cheque was not traced and as to whether a duplicate cheque could be issued or payment made by debiting his S.B. account. On 15.01.1998, the petitioner remitted Rs.13,625/- to the Gotlagattu branch to settle his dues under the said cheque along with interest for remitting the amount to the Bank of Baroda.

16. In the charge sheet issued to him, the petitioner was informed that the circumstances mentioned below amounted to gross misconduct under clause 19.5(j) of the Bipartite Settlement:-

i. Pilfering unused cheque leaves surrendered by the legal heirs of Sri Y. Thirupathi Reddy while closing the deceased S.B. account No. 71 with the branch;

ii. Altering the account number appearing in the said cheque leaf bearing No. 698839 from 71 to 2871 without authorization and issuing the said cheque in favour of M/s. Chunduri Chit Funds Pvt., Ltd;

iii. Issuing the said cheque without keeping/providing sufficient balance in his S.B. account;

iv. Receiving the registered letter sent by Bank of Baroda, Ongole on 31.03.1997 containing the cheque issued by him and in not handing over the same to the Manager/SB department for debiting his S.B. account;

v. Requesting the branch Manager as to how to resolve the issue if the said cheque is not traced.

17. The petitioner was informed that the aforesaid circumstances indicated that, with the fraudulent intention of deriving undue/unlawful pecuniary benefit for himself, the petitioner had caused destruction/non-delivery of the said cheque issued by him and that these acts constitute gross misconduct under clause 19.5(j) of the Bipartite Settlement. The petitioner was charged of having committed acts of gross misconduct of "doing acts prejudicial to the interest of the Bank" under clause 19.5(j) of the Bipartite Settlement.

18. The enquiry officer analyzed the evidence and recorded his findings as under:

ANALYSIS OF EVIDENCE/FINDINGS:

As per the deposition of M.W.1, the cheque No.698834 dated 25.1.1997 was not issued to S.B.2871 of the CSE; whereas, the same was used on SB 2871 for Rs.28,100/- favouring M/s Chalapathi Chit Funds (P) Ltd; under LSC No.1/97 by the CSE though on the date of issue, the balance was only Rs.41.35; according to M.W.1 the cheque leaves No.698831 – 840 were issued to S.B.71 of Sri Y.Thirupati Reddy and only two cheque leaves, is; 831 and 832 were used by the said account holder and the account was closed in settlement of claims on 7.3.1995 and on scrutiny by M.W.1 this cheque bearing No.698834, indicates that the S.B. account number has been altered to read as 2871 though the same was originally issued to S.B.71. Similarly, M.W.1, with the help of MEX 6 also deposed that the Cheque No.698840 of the same series was used by the CSE on his S.B. account 2871. The above deposition of M.W.1 has been supported by the documents produced by him, viz; MEX 4, 2, 6, 9 and 10. Similarly, according to M.W.1, OBC forwarding schedule and remittance slip of Bank of Baroda coupled with other correspondence showed that the cheque No.698839 for Rs.13000/- favouring M/s Chenduri Chit Funds (P) Ltd; and under OBC 1596 was drawn on S.B 2871 by the CSE. The said cheque was also originally issued to S.B. account No 71 of Sri Thirupati Reddy used by the CSE. Documents produced in support of the above have been the correspondence from the Bank of Baroda, vide MEX 11, 12, 13 and 14. During the cross-examination M.W.1 further affirmed that possession of the unused/surrendered cheuqe leaves No.698833-840 by the CSE of the closed SB account 71 is proved on account of CSE having issued cheques No.698834 (MEX 2) and 698840 (MEX 6) on his SB account 2871. On the

other hand, the CSE in his deposition as DW 1, has clearly stated that he had given a blank cheque No.698839 to M/s. Chenduri Chit Funds (Pvt.) Ltd; The contentions of the defence have been that since both cheques No.698834 and 698839 were passed for payment and they indicate that the Manager had authorized the issuing of such cheques as well as alterations contained in the said cheques, though no separate record is available for such issuance. Despite the above defense contention, the evidence adduced before the enquiry clearly indicate that unused cheque leaves surrendered by the legal heirs of late Y. Tirupathi Reddy, while closing the deceased SB account No. 71 with the branch have been used by the CSE by altering the account number to read as 2871 as having issued the same on his account unauthorisedly. I am not convinced with the defence contention that mere passing of such cheques by the branch automatically regularized the CSE's unauthorised using of those instruments, particularly when the same were not expressly/specifically issued to him for re-usage authorizing him to make the alterations in the account number earlier written on the said cheque leaves. As such, it is clear from the evidences adduced before the enquiry supported by the documents that there has been pilferage or taking possession of the unused cheque leaves of SB 71 by the CSE and altering the account number from 71 to 2871 in the cheques in question issued in favour of M/s. Chenduri Chit Funds (Pvt.) Ltd by the CSE without clear authorization although such taking possession/alterations/re-usage were tried to be justified by the defence during the enquiry on the pleas that there had been no withdrawal slips/withdrawal slip issue register available/maintained at the branch. Similarly, from the deposition of MW 1 and the related documents introduced in the enquiry, the cheque No.698839 is issued without keeping sufficient balance in his account has been established since as on the date of the issuance of the cheque for Rs.13000/-, i.e., on 13.3.1997. The same has admitted to have maintained a balance of only Rs.2.02 in his SB account and as on 31.3.1997, a balance of Rs.81.06 only; it has also come on record of the enquiry that the registered letter sent by the Bank of Baroda, Ongole was received by the CSE on 31.3.1997, which contained the cheque issued by the CSE himself at which time, the then Manager, Sri Radhakrishna Rao, was away on office duty. In this regard, adequate documentary evidence has been adduced before the enquiry vide MEX 28, 13 and 14. Moreover, the CSE himself has not disputed his having received the same (after the receipt of the same). It has come on record from various documents as well as deposition of MW 1 that the same was not debited to his SB account and the circumstances brought before the enquiry indicate that the CSE had not handed over the same to the then Manager or to the SB department for debiting to the CSE's SB account. Although the contentions advanced by the CSE have been that he handed over the same to the then Manager without opening the postal cover, there has not been any convincing evidence other than the version of the CSE to Vouchsafe that he (CSE) had actually handed over the said cover without opening/without knowing the contents thereof. But the facts brought before the enquiry indicate clearly that the contents of the said cover (the said OBC including the CSE's cheque) were not given to SB department for debiting the CSE's account on 31.03.1997 or subsequently and found to be

misplaced or not available in the branch until Bank of Baroda reminded for the same. Moreover, as on 31.03.1997, the balance available in the CSE's SB account was only Rs. 81.06. As such, despite the denial by the CSE as regards his not having handed over the same to the Manager or to SB department for debiting his SB account, he thereby caused its misplacement and destruction or non-delivery, thus without causing or ensuring its debit to his SB account on the relevant or subsequent days though he was incharge of the branch and was entrusted with Special Assistant duties on the said day in the absence of the Manager. It is also clear from the deposition of MW 1 that the CSE provided funds on 15.01.1998 inclusive of interest towards the said OBC for transmission to Bank of Baroda to settle the dues under the said cheque and that he promised in his letter dated 20.08.1997 to remit the amount and also to issue a duplicate cheque and also requested the Branch Manger as to how to resolve the issue if the cheque was not traced.

Although the defence was harping on various aspects such as not providing the investigation report, not producing the Manager as witness, procedural violation at the branch, M.W-1 not seeing the CSE personally destroying the cheque in question, honouring the cheques ipso facto tantamounts to authorization by the Manager regarding the pilferage/removal as well as alterations effected in the account numbers therein, CSE standing as a guarantor only, CSE giving a blank cheque No. 698839 duly signed, not knowing as to the exact amount of dues and as to when the said cheque will be presented, not maintaining sufficient balance to meet such of his cheques, either at the time of issuing or on its presentation, being busy with year-end work on 31.03.1997 etc; I find from the evidentiary materials/circumstances brought before the enquiry that the above aspects do not lend much credibility in favour of the defence. On the other hand, not maintaining sufficient balance, either at the time of issuance/presentation of cheques in question, using surrendered the cheque leaves of some other account and effecting alterations without explicit authorization/records, giving blank cheque and expressing ignorance about the amount and date of such cheque, that too, for a sum of Rs.13,000/- indicate inherent hollowness of such contentions. As the circumstances such as pilfering/removing of unused cheque leaves of SB 71, using the same for SB 2871 by altering the account number without authorizing/issuing the cheque No. 698839 in favour of M/s. Chunduri Chit Funds (Pvt.) Ltd; with such alteration in the account by the CSE without keeping sufficient balance, receiving the registered letter sent by Bank of Baroda on 31.03.1997 containing the said cheque issued by him and not handing over the same to the Manager or to SB department for debiting CSE's SB account, providing funds only on 15.01.1998 for transmission to Bank of Baroda, Ongole to settle his dues under the said cheque along with interest and also requesting the Branch Manager as to how to resolve the issue if the said cheque is not traced have come out very clearly and convincingly from the evidentiary materials brought forth before the enquiry; these, therefore, go to indicate that the CSE with the fraudulent intention of deriving undue/unlawful pecuniary benefit for self and caused destruction/non delivery of the said cheque issued by him.

As such, the charge of "doing acts prejudicial to the interest of the

bank", vide Clause No. 195(j) of the Bipartite Settlement levelled against Sri T. Premchander Rao, Clerk, Emp. No. 323797, Kothapatnam branch, vide Charge sheet No. CGS/HYD/98/116 dated 13.6.1998 is proved/established in the enquiry and I record my findings accordingly."

DEPARTMENTAL ENQUIRY CAN BE HELD EVEN IN THE ABSENCE OF A REPLY, BEING SUBMITTED BY THE DELINQUENT EMPLOYEE, TO THE CHARGE SHEET:

19. With regards the first contention, relating to failure on the part of the management to enclose the list of documents, and the list of witnesses, to the charge sheet resulting in the petitioner being deprived of the opportunity to effectively prepare his defence and to submit his written statement and reply to the charge sheet, it is necessary to note that the bipartite settlement, which governs the procedure for conducting disciplinary proceedings against award staff of banks, does not specifically require the bank management to furnish these documents along with the charge sheet. The contention, however, is that failure to furnish these documents is in violation of principles of natural justice. From the facts stated above, it is clear that while the petitioner was issued a charge sheet on 13.06.1998 calling upon him to submit his reply thereto within fifteen days, (which period ended by 12.07.1998), the petitioner did not furnish his reply to the charge sheet within the said period and it was on 24.07.1998 that he sought 30 days time to give his reply to the charge sheet. Even within this extended period of 30 days the petitioner did not submit his reply and instead, vide letter dated 03.09.1998, sought for the list of documents and witnesses. Even before this letter dated 03.09.1998 was received the disciplinary authority, vide letter dated 04.09.1998, had decided to hold an enquiry. It is only after a

decision had been taken and the letter dated 04.09.1998 had been addressed to the petitioner did the respondents receive a copy of the petitioner's letter, dated 03.09.1998 on 06.09.1998. On the petitioner renewing his request, vide letter dated 12.10.1998, the respondent advised him, vide letter dated 14.09.1998, to attend the enquiry and obtain the list of witnesses and documents. The petitioner was provided all the required material at the first sitting of the enquiry held on 26.10.1998.

20. The grievance, if any, which the petitioner could have had is only in not being able to submit an effective reply, to the charge sheet, for these documents were furnished to him at the first sitting of the enquiry itself. It is well settled that while it may be desirable to call for an explanation to the charge sheet, from the delinquent employee, there is no principle which compels such a course to be adopted as calling for an explanation can only be with a view to making the enquiry unnecessary, if the explanation is found to be satisfactory. Failure to call for an explanation to the charge sheet and proceeding with the enquiry instead cannot be held to be in violation of principles of natural justice.

21. In **Firestone Tyre and Rubber Company, Ltd Vs. Their Workmen**[15], the Supreme Curt held thus:-

".....The Tribunal gave several reasons for its conclusion that the enquiry was not properly conducted. These were:

a. **that the enquiry was held immediately after the investigation without taking the explanation of the workman;**
b. the workman was examined and cross-examined even before the evidence against him was recorded;
c. copies of the statements of witnesses examined at the preliminary enquiry were not supplied to the workman;
d. copies; of the minutes of the enquiry were not given to the workman before asking him to reply to the showcause notice; and
e. the evidence of Das which cleared the workman was not properly considered.

The Tribunal did not rely upon the records of the enquiry and, on the basis of evidence recorded by itself, held that the fault of the workman was not established and that his dismissal was wrong, with the result already indicated.

The company now contends that none of these grounds has any validity. It has tried to meet each of the grounds and in our opinion successfully. We shall take these grounds one by one and indicate the submission which in our opinion must be allowed to prevail. **As regards ground (a) it is clear to us that, although it may be desirable to call for such an explanation, before serving a charge sheet, there is no principle which compels such a course. The calling for an explanation can only be with a view to making an enquiry unnecessary, where the explanation is good but in many cases it would be open to the criticism that the defence of the workman was being fished out. If after a preliminary enquiry there is prima facie reason to think that the workman was at fault, a chargesheet setting out the details of the allegations and the likely evidence may be issued without offending against any principle of justice and fairplay. This is what was done here and we do not think that there was any disadvantage to the workman.** The management had pointed out that even on fact the view is not correct. They have referred to the workman's letter, dated 30 May 1963, in which he reiterated that he was applied a shorter number of tyres than that given in the invoices and to his statement before Sri Coyajee that he would state his case fully. In these circumstances, it is hardly possible to say that the workman was at a disadvantage in any way……." (emphasis supplied)

22. In **Superintendent, Kaliyar Estate Vs. O. Kuriakko**[16], it has been held thus:-

"…….Exhibit P-1 states three grounds for holding that the petitioner was prejudiced against the first respondent and that the enquiry was not properly conducted. **One is that the first respondent was not given an opportunity to submit his explanation why action should not be taken against him before the enquiry was initiated. There is no substance in this ground. There is not statutory provision that a delinquent worker should be given an opportunity to explain why an enquiry in respect of a charge should not be conducted against him. All that he is entitled to have is that he should be given sufficient notice of the charges against him and of the allegations on which the charges are based and a fair and reasonable opportunity t meet the charges and establish his defence, if any, before the enquiring authority. If authority is required for the above proposition, reference may be made to the decision of the Supreme Court in Firestone Tyre & Rubber Co. Vs. Their Workmen. (1967 II LLJ 715)……."** (emphasis supplied)

23. In **Motor Industries Co. Ltd Vs. D. Adinarayanappa**[17],

the Karnataka High Court held thus:-

"…….Sri M.C. Narasimhan invited my attention to the immediately preceding portions of the standing order in which it is provided that before passing an order of suspension as a substantive punishment against an employee, he should be given an opportunity of explaining the facts and circumstances alleged against him, as giving sufficient clue for holding that a similar opportunity should be given before an enquiry is held pursuant to which an order of dismissal is passed under the relevant part of the standing order under consideration in this case. I see no substance in this argument. The portions of the standing order relied on for the 1st respondent deals with cases of suspension as a measure of punishment. The procedure prescribed is that after placing a workman under suspension and before treating such suspension as a substantive punishment on him he should be given an opportunity to explain. **That is no ground for holding that when a regular enquiry is held under the relevant portions of the standing order proceeding an order of dismissal, an earlier opportunity should be given of furnishing a reply to the charges…….**" **(**emphasis supplied).

24. Since failure to provide an opportunity to the delinquent employee, to submit his explanation to the charge sheet, does not vitiate the disciplinary proceedings, failure to furnish the list of documents along with the charge sheet, even if it is assumed that the petitioner was deprived of the opportunity to submit an effective reply to the charge sheet, cannot be said to vitiate the enquiry proceedings.

BURDEN TO ESTABLISH PREJUDICE CAUSED, IN NOT GRANTING ADEQUATE TIME TO PERUSE THE DOCUMENTS SUPPLIED, IS ON THE DELINQUENT EMPLOYEE:

25. With regards the contention that the time granted for perusal of the list of documents and witnesses, was grossly insufficient, resulting in the petitioner being denied reasonable opportunity of cross-examining the management witness, it is necessary to note that, after the examination in chief of the management witness, at the petitioner's request the matter was adjourned to the next day for his cross-examination. The matter was thereafter adjourned to

16.11.1998 for the defence evidence.

26. A perusal of the enquiry proceedings would reveal that the petitioner, and his defence representative, had cross-examined the management witness at length and had put 22 cross-examination questions to the management witness. Except to contend that the time granted, for perusal of the list of documents and witnesses, was grossly insufficient, nothing else has been stated by the petitioner as to how he was prejudiced thereby and what more could have been elicited in cross-examination, of the management witness, if he had been granted further time. In the absence of any period being prescribed, under the bipartite settlement, for perusal of the documents, the question as to whether the time granted was sufficient or insufficient would depend on the facts and circumstances of each case and the eventual test would be as to whether the delinquent employee had been prejudiced in not being granted more time.

27. In **State Bank of Patiala Vs. S.K. Sharma**[18], Rule 68(b)(iii) of the State Bank of Patiala (Officers) Service Regulations required copies of the statements of witnesses, if any recorded earlier, to be supplied to the delinquent employee not later than three days before the commencement of examination of witnesses by the inquiring authority. In the said case, on the very date on which the copies of statements of witnesses were furnished, the enquiry proceedings commenced. In this context, the Supreme Court held thus:

"….THE matter can be looked at from the angle of justice or of natural justice also. The object of the principles of natural justice - which are now understood as synonymous with the obligation to provide a fair hearing - is to ensure that justice is done, that there is no failure of justice and that every person whose rights are going to be affected by the proposed action gets a fair hearing. The said objective can be tested with reference to sub-clause

(iii) concerned herein. It says that copies of statements of witnesses should be furnished to the delinquent officer "not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority. "now take a case - not the one before us - where the copies of statements are supplied only two days before the commencement of examination of witnesses instead of three days. The delinquent officer does not object; he does not say that two days are not sufficient from him to prepare himself for cross-examining the witnesses. The enquiry is concluded and he is punished. Is the entire enquiry and the punishment awarded to be set aide on the only ground that instead of three days before, the statements were supplied only two days before the commencement of the examination of witnesses? It is suggested by the appellate Court that sub-clause (iii) is mandatory since it uses the expression "shall". Merely because, word "shall" is used, it is not possible to agree that it is mandatory. We shall, however, assume it to be so for the purpose of this discussion. But then even a mandatory requirement can be waived by the person concerned if such mandatory provision is conceived in his interest and not in public interest, vide Dhirendra Nath Gorai v. Sudhir Chandra Ghosh, (1964) 6 SCR 1001 : (AIR 1964 SC 1300 at p. 1305) Subba Rao, J. , speaking for the Court, held :

"where the Court acts without inherent jurisdiction, a party affected cannot by waiver confer jurisdiction on it, which it has not. Where such jurisdiction is not wanting, a directory provision can obviously be waived. But a mandatory provision can only be waived if it is not conceived in the public interests, but in the interests of the party that waives it. In the present case the executing Court had inherent jurisdiction to sell the property. We have assumed that S. 35 of the Act is a mandatory provision. If so, the question is whether the said provision is conceived in the interests of the public or in the interests of the person affected by the non-observance of the provision. It is true that many provisions of the Act were conceived in the interests of the public, but the same cannot be said of S. 35 of the Act, which is really intended to protect the interests of a judgment-debtor and to see that a larger extent of his property than is necessary to discharge the debt is not sold. Many situations may be visualized when the judgment-debtor does not seek to take advantage of the benefit conferred on him under S. 35 of the Act. ……

……..WE may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee) :

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
(2) A substantive provision has normally to be complied with as explained

hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz. , whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i. e. , whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(B) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived if, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same, viz. , test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory

provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and not adequate opportunity, i. e. , between "no notice"/"no hearing" and "no fair hearing. " (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i. e. , in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand-point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/tribunal/authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz. , to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing or the rule of audi alteram partem. In such situations, the Court may have to balance public/state interest with the requirement of natural justice and arrive at an appropriate decision….."

28. Since the effect of not granting more than a day's time, to enable the petitioner to effectively cross-examine the management witness, must be examined on the touchstone of prejudice and since it is for the delinquent employee to show how he was prejudiced in this regard and as the petitioner has neither established prejudice nor has he stated as to what more could have been elicited by him in cross examining the management witness this contention, of inadequate time being granted to peruse the documents resulting in the petitioner not being able to effectively cross-examine the management witness, must also be rejected.

NOT FURNISHING A COPY OF THE PRELIMINARY ENQUIRY REPORT, IF NOT RELIED UPON IN THE DEPARTMENTAL ENQUIRY, IS NOT FATAL:

29. With regards the contention, that failure to supply a copy of the preliminary investigation report is fatal to the domestic enquiry, where the preliminary investigating officer was alone examined as the management witness, it is necessary to note that the preliminary investigation report was neither relied upon nor did it form part of the evidence adduced on behalf of the management. The investigating officer was examined as a witness and all the documents, on which reliance was placed by the management to substantiate the charges, were marked as exhibits. It is these documents which, alone, formed the basis on which the enquiry officer held the petitioner guilty of the charges. Since the preliminary investigation report was neither relied upon nor marked as an exhibit in the domestic enquiry, failure to furnish a copy of the preliminary investigation report to the petitioner, merely because the preliminary investigation officer was examined as the sole management witness in the departmental enquiry, would not vitiate the departmental enquiry proceedings.

30. In **M.K. Das**[2], the Supreme Court held thus:

"……..THE fact that a copy of the report of the Superintendent of Police, Anti Corruption Branch, dated 21/12/1957 was not furnished to the respondent is, in our opinion, of no consequence in relation to the actual enquiry conducted against the respondent. That report was necessitated in view of the complaints received against the respondent and the enquiry made by the Anti Corruption Branch was only for the purpose of enabling the Government to consider whether disciplinary proceedings should be initiated against the respondent. On receipt of the report, the Government felt that disciplinary proceedings will have to be initiated against the respondent and that is how the enquiry proceedings were commenced. **The validity of the enquiry will have to be decided only by the manner in which it has been conducted. So far as that is concerned, it is clear from the record that the respondent had a full opportunity of participating in the enquiry and**

adducing evidence on behalf of himself and of cross-examining the witnesses for the prosecution and the entire evidence was recorded in his presence. The non-furnishing of the copy of the report of the Superintendent of Police, Anti Corruption Branch, does not vitiate the enquiry proceedings……"(emphasis supplied)

31. In **Prafulla Chandra Behera**[5], a Division Bench of Orissa High Court held thus:

"…….The next question is, if the departmental proceeding is vitiated by denial of principles of natural justice. Admittedly, there was an inspection by the Inspectors and on the basis of the report submitted, the disciplinary proceeding was initiated. The petitioner repeatedly asked for a copy of the report on the basis of which charges were framed against him. The report was denied to him on the ground that the same was confidential in nature. **It is well settled that a report preceding the inquiry with reference to which or on the basis of which the disciplinary proceeding was started should be furnished to the delinquent to enable him to prepare his defence. It is not open to the management, the employer, to say that since the witness or the document on which it would rely would be disclosed to the delinquent, he will suffer no prejudice. In our opinion, such a contention does not satisfy the requirements. The Inspector may have examined witnesses including the officials of the Bank. What was their versions at the earlier stage? Did they give a different version from the one advanced at the inquiry? Did they shift their stand? It is difficult to postulate the manner in which the delinquent would have been benefited by the supply of the report and the extent to which he has been prejudiced by the denial thereof. He should have been supplied the relevant portion pertaining to the allegation which was the subject-matter of the charge. We are of the view that the denial of the management to supply a copy of the report so far as that related to the allegations infracted principles of natural justice. It has been held that where principle of natural justice is violated, the Court need not consider if there is prejudice because violation of principles of natural justice is prejudice by itself……..." (emphasis supplied)**

32. It is necessary to note that in **Prafulla Chandra Behera**[5] the earlier judgments of the Apex court, in **M.K. Das**[2], was not noticed.

33. In **Narayan Dattatraya Ramteerthakhar**[3], the Supreme Court held thus:

"……..LEARNED counsel for the petitioner sought to contend that the petitioner has not committed any misappropriation and that he was forced to

deposit the money. We cannot accept the contention in view of the fact that the petitioner himself had deposited the amount. It is then contender that the preliminary enquiry was not property conducted and, therefore, the enquiry is vitiated by principles of natural justice. We find no force in the contention. **The preliminary enquiry has nothing to do with the enquiry conducted after the issue of the charge-sheet. The former action would be to find whether disciplinary enquiry should be initiated against the delinquent. After full-fledged enquiry was held, the preliminary enquiry had lost its importance……."(emphasis supplied)**

34. In **A. Sadanand**[1], this Court held thus:

"In this case, having refused to furnish the copy of the preliminary enquiry report submitted by the officials of the Vigilance Department of the Bank on the ground that the Bank is not relying on it chose to examine both the officers of the Vigilance Department who conducted the preliminary enquiry and unearthed various illegalities said to have been committed by the petitioner. A look at the *ex parte* proceedings conducted by the Enquiry Officer it abundantly clear that the Bank intends to prove the charges leveled against the petitioner only through these two witnesses. When the Bank does not want to rely upon the enquiry report, the question of examining the officers who conducted the enquiry does not arise as they are not competent to speak about the alleged irregularities committed by the petitioner. They are not having any personal knowledge about the commission of the alleged irregularities nor they were the affected parties. The information gathered by hem during the enquiry from the records of the Bank can be termed as hearsay or secondary unless and until the information gathered by them is proved through a competent witness to speak about the commission of the alleged offence, with reference to the documentary evidence, their evidence is not admissible in evidence……."

35. It is necessary to note that in **A. Sadanand**[1], the judgment of the Apex Court in **M.K. Das**[2] and **Narayan Dattatraya Ramteerthakhar**[3] was not noticed.

36. In **Shatrughan Lal**[4], the Supreme Court held thus:

"……..It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge- sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed

to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself……"

37. The two Judge Bench of the Supreme Court, in **Shatrughan Lal**[4] did not notice its earlier three Judge bench judgment in **M.K.Das**[2].

CONFLICT IN JUDICIAL DICTA OF TWO JUDGEMENTS OF THE SUPREME COURT: THE JUDGEMENT OF A LARGER BENCH IS BINDING ON THE HIGH COURT:

38. As held in **Mattulal Vs. Radhelal**[19], **State of U.P. Vs. Ram Chandra Trivedi**[20], **Union of India Vs. Raghubir Singh**[21] and **Chandra Prakash Vs. State of U.P.**[22], in the case of a clear conflict in the judicial dicta of two judgments of the Supreme Court, the High Court would be bound by the judgment of a larger bench as compared to a bench with lesser number of judges.

39. In **Mattulal**[19], the Supreme Court noticing the contrary views taken by a bench of four judges of the Supreme Court in **T.B. Sarvate Vs. Nemichand**[23] and **Smt. Kamala Soni Vs. Rup Lal Mehara**[24], a bench of three judges, held that since the earlier judgment of a bench of four judges of the Supreme Court in **T.B. Sarvate**[23] was not noticed by the subsequent three judge bench of the Supreme Court in **Smt. Kamala Soni**[24], the decision in **T.B. Sarvate**[23] must be followed as against the decision in **Smt. Kamala Soni**[24] as the former was a decision of a larger bench.

40. In **Ram Chandra Trivedi**[20], the Supreme Court held thus:

"It is also to be borne in mind that even in cases where a High Court finds

any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in Union of India v. K. S. Subramanian (Civil Appeal No. 212 of 1975, decided on 30/07/1976) to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself."

41. I n **Raghubir Singh**[21], the Constitution Bench of the Supreme Court held thus:

"……WHAT then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the Courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to' guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges……."

"…….WE are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court……"

42. Following the judgment in **Raghubir Singh**[21], the Supreme Court in **Chandra Prakash**[22], held thus:

"A careful perusal of the above judgments shows that this Court took note of

the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of *Raghubir Singh*[1] held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges."

43. In view of the authoritative pronouncement of the Supreme Court in the aforesaid judgments, the pronouncement of law by a Division Bench of the Supreme Court is binding on a Division of the same or smaller number of judges. In cases where the High Court finds any conflict in the views expressed by larger and smaller benches of the Supreme Court, it cannot disregard the views expressed by the larger bench of the Supreme Court and must follow the law laid down therein and not what has been laid down by a Division Bench consisting of lesser number of judges, more so when the earlier larger bench judgment was not brought to the notice of the subsequent smaller bench of the Supreme Court.

44. In view of the law laid down in **M.K. Das**[2], failure to furnish a copy of the preliminary investigation report, when the said report does not form part of the enquiry proceedings nor was it relied upon by the respondent management, is of no consequence. Since it is well settled that a preliminary enquiry has nothing to do with the enquiry conducted after the issue of charge sheet and, after a full fledged enquiry is held the preliminary enquiry loses its importance, failure to furnish a copy of the preliminary

investigation report, merely on the ground that the investigation officer is examined as a witness, is of no consequence.

FAILURE TO EXAMINE AN IMPORTANT WITNESS DOES NOT VITIATE DEPARMENTAL ENQUIRY PROCEEDINGS:

45. The next contention urged by the petitioner is that the respondent management had failed to examine the material witness in this case i.e., the erstwhile branch manager and that failure to examine this witness vitiated the departmental enquiry. It is necessary to note that, while the respondent bank had not produce the erstwhile branch manager as a witness, neither the delinquent employee nor his defence representative had requested the enquiry officer to summon the erstwhile branch manager as their witness or as an independent witness in the enquiry.

46. It is well settled that the Enquiry Officer, holding a domestic enquiry, cannot take any effective steps to compel attendance of witnesses and consequently cannot be said to have caused any procedural irregularity in not causing production of witnesses. (**Tata Oil Mills Company Ltd. v. the Workmen**[25]**; Shambunath Goyal v. Bank of Baroda**[26]). Since the Enquiry Officer has no power, as a court, to summon witnesses, just as the Bank produces its witnesses, the charge sheeted employee has to take steps to produce his witnesses. The Enquiry Officer has neither the power to produce nor compel the Bank to produce witnesses for being cross-examined by the charge sheeted employee. (**Tata Engineering & Locomotive Company Ltd. v. S.C. Prasad**[27]). Nothing prevented the petitioner from producing the branch manager as a witness in his defence. The mere fact that the branch manager was not examined as a witness, cannot

automatically lead to the conclusion that the enquiry proceedings are vitiated.

47. In **Nellimerla Jute Mills Vs. Labour Court**[28], the Division bench of this Court held thus:

".....In the light of the principles laid down, we have to see whether the finding that the domestic enquiry conducted by the appellant was defective or was not proper is justified. The only ground that was argued before us in support of that conclusion is that one of the mediators in the panchanama held at the time when the stolen property was recovered was not examined. It was contended on behalf of the employee that all the other witnesses were employees of the appellant and they were made to support the case of the appellant. If the independent mediator had been examined, truth would have come out. Inasmuch as he was not examined, the domestic enquiry was not proper. We are unable to agree with the contention. **It is open to the Management to examine such witnesses as it chooses in the domestic enquiry. If it does not examine any witness, it takes the risk of the case being held to be not proved. It cannot be compelled to examine any particular witness. The mere fact that it does not examine any witness cannot vitiate the enquiry. No standing orders have been pointed which compel the Management to examine all the witnesses to a particular incident. Hence, it cannot be said that any standing order is violated.**

The only other question is whether the employee was given a reasonable opportunity to meet the case of the Management and whether the principles of natural justice have been violated. We are unable to see how it can be said that the principles of natural justice are violated by the employer not examining a particular witness. If an employee requires a particular witness to be examined and it is within the power of the employer to produce such witness for examination and it does not do so, it may reasonable be argued that the principles of natural justice are violated as the employee has not been given a reasonable opportunity to examine a witness to depose in his favour, but that is not the case here. In these circumstances, it is impossible to hold that the domestic enquiry was not proper or was defective. In G.E.C. of India Vs. V. Kedia: 1968 (1) LLJ 731 it was contended that the domestic enquiry was vitiated as a particular witness employed by the company was not examined. It was held that the mere fact that the Enquiry Officer did not of his own accord examine the said witness does not vitiate the enquiry. **It was open to the parties to summon such evidence oral or documentary which they considered necessary and if one or the other party omitted to summon a witness or a document, the Enquiry Officer cannot be blamed for it, nor is the enquiry rendered defective (refer Supreme Court in Tata Oil Mills Vs. Workmen: AIR 1965 SC 155).** In that case, the employee contended that the Enquiry Officer should have been taken steps to get the two witnesses brought before him for giving evidence. The Supreme Court observed that in a domestic

enquiry, the officer holding the enquiry can take no valid or effective steps to compel the attendance of any witness and have taken steps to produce his witnesses. It was further observed that if on refusing to adjourn the hearing at the instance of workman, the Enquiry Officer failed to give the workman a reasonable opportunity to lead evidence, that may in a proper case be considered to introduce an element of infirmity in the enquiry, but it cannot be held that the enquiry suffered from infirmity in the enquiry, but it cannot be held that the enquiry suffered from infirmity merely because the Enquiry Officer did not compel the witnesses whom the employee wanted to come and give evidence. In our view, the present case is a fortiori one. **If the fact that the Enquiry Officer does not compel a witness whom the employee wants to give evidence does not vitiate the enquiry, it would follow that the fact that the Enquiry Officer did not examine a witness who would support the Management would not vitiate the enquiry. It cannot be said that by not examining the witness, any injustice was caused to the employee.** Reliance was placed on the decision in State Bank of India Vs. R.K. Jain: 1971 (II) LLj 599. In that case, the workman brought two witnesses of considerable importance at a prior enquiry conducted by another Enquiry Officer which was abandoned for no fault of the workman. In the subsequent enquiry, he made a request to have the two witnesses summoned for giving evidence on his side, but his request was not forwarded to the Management and no arrangements for production of the two witnesses were made. In those circumstances, it was held that the principles of natural justice had been violated and the workman was not afforded a reasonable opportunity to place his defence before the Enquiry Officer and that the order passed on such a domestic enquiry could not be sustained. **The situation in the present case is entirely different as this is not a case where the Management has not taken any steps to examine the witnesses who were required to be produced by the workman, but it is a case where the Management did not choose to examine one witness on its own behalf.** We are therefore of the view that the Tribunal was not justified in holding that the domestic enquiry was not proper……..”(emphasis supplied)

48. Learned counsel for the petitioner would however place reliance on **N. Subrahmanyam**[6] and **Habeeb Mohammad v. State of Hyderabad**[29].

49. In **Habeeb Mohammad**[29], the Supreme Court held thus:-

“…….IN this situation it seems to us that Biabani who was top-ranking police officer present at the scene was a material witness in the case and it was the bounden duty of the prosecution to examine him, particularly when no allegation was made that if produced, he would not speak the truth; and in any case, the court would have been well advised to exercise its discretionary powers to examine that witness. The witness was at the time

of the trial in charge of the Police Training School and was certainly available. In our opinion, not only does an adverse inference arise against the prosecution case from his non-production as a witness in view of illustration (g) to section 114 of the Indian Evidence Act, but the circumstance of his being withheld from the court casts a serious reflection on the fairness of the trial. It seems to us that the appellant was considerably prejudiced in his defence by reason of this omission on the part of the prosecution and on the part of the Court……."

50. While failure to examine a material witness may vitiate criminal proceedings, as held in **Habeeb Mohammed**[29], non-examination of a witness in the departmental enquiry, more so when the delinquent employee had not sought for such witness being examined, would be of no consequence and the validity of the enquiry and the punishment imposed, on the delinquent employee by the disciplinary authority, must be examined on the basis of the evidence adduced in departmental enquiry. As long as the evidence, to establish the charge, is found to be reasonable no interference is called for.

51. In **N. Subrahmanyam**[6], this Court held thus:

"…….Learned Counsel for the petitioner contended that there was no positive evidence available before the Enquiry Officer to hold the petitioner guilty of the charge. A reading of the report of the Enquiry Officer, at para 6 under the caption "analysis of evidence" fails to impress this Court that there was any evidence before the enquiry Officer to hold the petitioner guilty of the charge. The second witness S.W.2 who was examined on behalf of the management deposed that as per the report of the Head Master of C.B.M. High School, which is marked as S.Ex.4, the entries in the transfer certificate (S.Ex.2) produced by the petitioner are not tallying with the entries made in the Admission Register for the year 1960-61 maintained in the C.B.M. High School. **However, the only competent person to speak about the genuineness or otherwise of the entries in the transfer certificate produced by the petitioner with reference to the original Admission Register for the year 1960-61 is the Head Master of the C.B.M. High School. Unfortunately, the management did not choose to examine the Head Master of the C.B.M. High School for the reasons best known to them. Had the said Head Master been examined on behalf of the management, his evidence could have thrown any amount of light on the transfer certificate produced by the petitioner and the petitioner would have got an opportunity to cross-examine him. Basing on the**

letter written by the Head Master dated 27.1.1992 the respondents have held the charge proved against the petitioner and imposed the penalty of compulsory retirement from service. When such a severe punishment is imposed only on the basis of the letter dated 27.1.1992 written by the Head Master of the C.B.M. High School, it shocks the conscience of the Court as to how such a major penalty could be imposed on thee petitioner without there being any evidence supporting the version of the management.

It is by now well settled that the judicial review under Article 226 of the Constitution is available only to the limited extent of examining whether the procedure followed by the authorities in awarding punishment/penalty on a delinquent is in accordance with the procedure known to law.

It is not necessary for this Court to deal with each and every facet of contentions and discuss them at length when this Court, prima facie, is satisfied that there is no evidence before the Enquiry Officer to come to such conclusion that the certificate produced by the petitioner at the time of his entering the service of the respondents is bogus. As discussed earlier, the respondents for the reasons best known to them, have withheld a crucial witness like the Head Master of the C.B.M. High School from examination, whose evidence would have thrown much light on the varacity of the stand taken by them.

I n **Habeeb Mohammed's case**, the Supreme Court held that withholding a witness from examination would cast a serious reflection on the fairness of the trial. In the present case, the respondents should have discharged their burden by examining the crucial witness like the Head Master of the C.B.M. High School. The respondents simply cannot throw the burden on the petitioner. In Tika Ram and Sons Ltd.'s case, the Supreme Court has held that when a charge is made against a delinquent, the burden to prove the charge initially rests on the authority which charges the delinquent and it cannot be shifted totally on the delinquent……

……. I do not think, the Enquiry Officer had any evidence worth the salt before him to reach to the conclusion to declare that the charge against the petitioner is proved. Basing on the report of the Enquiry Officer, the third respondent has passed the order of compulsory retirement on the petitioner with effect from 19.2.1994. It is by now well settled that the disciplinary authority has to give necessary reasoning either for accepting or rejecting the report of the Enquiry Officer. A reading of the order passed by the third respondent-disciplinary authority which is dated 19.02.1994 imposing the punishment of compulsory retirement from service on the petitioner fails to convince this Court that the third respondent has applied his mind at all while imposing such a major punishment……"(emphasis supplied)

52. In **N. Subrahmanyam**[6], this Court applied the law laid down i n **Habeeb Mohammed**[29] to departmental enquiries also. It is necessary to note that in **N. Subrahmanyam**[6], the earlier

judgments of the Supreme Court in **Tata Oil Mills**[25] and **Narayana Dattatraya Ramtheerthakar**[3] were not noticed nor was the Division bench Judgment of this Court in **Nellimerla Jute Mills**[28] brought to its notice. In view of the law laid down by the Apex Court in **Tata Oil Mills**[25] and **Narayana Dattatraya Ramtheerthakar**[3] and the Division Bench of this Court in **Nellimerla Jute Mills**[28], it must necessarily be held that failure to examine the branch manager would not, by itself, vitiate the departmental enquiry.

53. As noted earlier, **Habeeb Mohammed**[29] related to examination of a witness in criminal proceedings and not in a departmental enquiry. It is well settled that while the degree of proof in criminal proceedings is proof beyond reasonable doubt, the degree of proof in departmental enquiries is preponderance of probabilities. Strict rules of evidence, which apply a criminal trial, do not apply to departmental enquiries.

54. In **Cholan Roadways Ltd Vs. G. Thirugnanasambandam**[13], the Supreme Court held thus:-

> "……IT is now a well-settled principle of law that the principle of Evidence Act have no application in a domestic enquiry……..
>
> …… IT is further trite that the standard of proof required in a domestic enquiry vis-a-vis a criminal trial is absolutely different. Whereas in the former 'preponderance of probability' would suffice; in the latter, 'proof beyond all reasonable doubt' is imperative……."

55. In **Lalit Popli**[14], the Supreme Court held thus:-

> "…… IT is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him: whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and

the rules governing the enquiry and trial are conceptually different. [see State of Rajasthan v. B. K. Meena and Ors. (1996) 6 SCC 417)]. In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct……..

56. As such even in the absence of the branch manager being examined, the enquiry officer, on the basis of the evidence on record, was entitled to conclude that the delinquent employee was guilty of the charges levelled against him.

MALICE: HIGH DEGREE OF PROOF REQUIRED TO ESETABLISH THE PLEA: PERSON AGAINST WHOM SUCH ALLEGATIONS ARE MADE MUST BE IMPLEADED AS A PARTY EO-NOMINEE:

57. The plea of malice and bias must also be rejected. The petitioner has chosen not to implead the disciplinary authority or the enquiry officer as party eo-nominee. It is settled law that the person against whom malice or bias is alleged should be impleaded as a party respondent to the proceedings, given an opportunity to meet the allegations and in his absence no enquiry over the allegations should be made. (**STATE OF BIHAR v P.P.SHARMA**[30]). Even otherwise, except a bare allegation that the enquiry officer and the disciplinary authority are biased and had acted mala fide, no material particulars have been furnished by the petitioner to substantiate the said allegations. It is well settled that the burden of establishing mala fides is very heavy on the person who alleges it. Allegations of mala fides are often more easily made than proved and the very seriousness of such allegations demands proof of a high order of credibility (**E.P. ROYAPPA v STATE OF TAMIL NADU**[31]).

58. In **Tara Chand Khatri v. Municipal Corporation of Delhi**[32] the Supreme Court held thus:

"…..THIS brings us to the last contention raised by Mr. Ramamurthi that the writ petition should not have been dismissed by the High Court in limine in view of the fact that it contained allegations of mala fides against the respondents. We are unable to accept this contention. **It has been held time and again by this Court that the High Court would be justified in refusing to carry on investigation into the allegations of mala fides if necessary particulars of the charge making out a prima facie case are not given in the writ petition. Keeping in view the well established rule that the burden of establishing mala fides lies very heavily on the person who alleges it and considering all the allegations made by the appellant in regard thereto, we do not think that they could be considered as sufficient to establish malus animus**. The High Court was therefore, not wrong in dismissing the petition in limine on seeing that a prima facie case requiring investigation had not been made out……." (emphasis supplied).

59. Issuance of the Circular dated 22.07.1999 by the respondent bank cannot be said to be actuated with malice and bias. The disciplinary authority, vide proceedings dated 10.04.1999, a copy of which was communicated to the petitioner on 15.04.1999, imposed on him the punishment of compulsory retirement from service. While it is true that the petitioner's appeal was pending before the 1st respondent on 22.07.1999, the fact remains that the order of compulsory retirement became effective from 15.04.1999, the date on which the order of punishment was communicated to the petitioner. Pendency of appeal did not alter the situation. Since the bank, in its circular dated 22.07.1999 furnished information to its branches regarding all employees who were terminated from service during the period 01.03.1999 to 30.04.1999 and since the petitioner's services were also terminated during this period, his name was also included in the

list of persons mentioned in the circular.

60. The contention that the disciplinary authority and the enquiry officer had acted mala fide and that the disciplinary proceedings are vitiated by bias must therefore be rejected.

ELABORATE REASONS NEED NOT BE ASSIGNED BY THE APPELLATE AUTHORITY WHILE CONFIRMING THE ORDER OF PUNISHMENT OR BY THE DISCIPLINARY AUTHORITY WHEN HE AGREES WITH THE FINDINGS OF THE ENQUIRY OFFICER:

61. The contention that the order of the disciplinary authority and the appellate authority suffer from non-application of mind, cannot also be accepted.

62. In **Tara Chand Khatri**[32], the Supreme Court held thus:

"……THE second limb of the third contention raised on behalf of the appellant which also overlooks the decisions of the Constitution Bench of this Court does not commend itself to us. **In this connection, we would like to make it clear that while it may be necessary for a disciplinary or administrative authority exercising quasi-judicial functions to state the reasons in support of its order if it differs from the conclusions arrived at and the recommendations made by the enquiring officer in view of the scheme of a particular enactment or the rules made thereunder, it would be laying down the proposition a little too broadly to say that even an order of concurrence must be supported by reasons. It cannot also, in our opinion, be laid down as a general rule that an order is a non-speaking order simply because it is brief and not elaborate. Every case, we think, has to be judged in the light of its own facts and circumstances**……"(emphasis supplied]

63. In **Ram Kumar v. State of Haryana**[33], the Supreme Court held thus:

".……IN view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. **The punishing authority has placed reliance upon the report of the Enquiry Officer Which means that he has not only agreed with the findings of the Enquiry Officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again**

discuss evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. **When by the impugned order the punishing authority has accepted the findings of the Enquiry Officer and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order**……..” (emphasis supplied)

64. In **S.N. Mukherjee v. Union of India**[34], the Supreme Court held thus:

“……In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. **The appellate or revisional authority, if it affirms such art order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge…**……”[emphasis supplied]

65. It is well settled that where the disciplinary authority agrees with the findings of the enquiry officer, the appellate authority agrees with the conclusions of the disciplinary authority and the findings of the enquiry officer, it is wholly unnecessary for the disciplinary authority or the appellate authority to pass an elaborate order. The order of the disciplinary authority and the appellate authority, in the case on hand, are speaking orders. There is no substance in the contention that the order of the disciplinary authority and the appellate authority suffer from non-application of mind or are bereft of reasons.

NO EVIDENCE/PERVERSE FINDINGS:

66. Now the contention that the findings of the enquiry officer holding the petitioner guilty of the charges are based on no evidence and are perverse. It is well settled that while this Court, in exercise of its Certiorari jurisdiction, would not sit in appeal and substitute its views for that of the disciplinary authority or the enquiry officer, nor would it, normally, examine the adequacy or sufficiency of the evidence adduced in a departmental enquiry, where the findings of the enquiry officer are based on no evidence and are perverse, interference of this Court, in exercise of its Certiorari jurisdiction, would undoubtedly be justified.

67. In **Lalit Popli**[14], the Supreme Court held thus:

"……..WHILE exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority.

In B. C. Chaturvedi v. Union of India and Ors. (1995 (6) SCC 749) the scope of judicial review was indicated by stating that review by the Court is of decision making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own finding.

AS observed in R. S. Saini v. State of Punjab and Ors. (1999 (8) SCC 90) in paragraphs 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits. It was noted as follows:

Before adverting to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion,

have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard……. "

68. In **H.C. Goel**[7]; the Supreme Court held thus:-

"……..It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. **It is conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311 (2), the High Court under Art. 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence….."**

"……..Mala fide exercise of power can be attacked independently on the ground that it is mala fide. Such an exercise of power is always liable to be quashed on the main ground that it is not a bona fide exercise of power. But we are not prepared to hold that if mala fides are not alleged and bona fides are assumed in favour of the appellant, its conclusion on a question of fact cannot be successfully challenged even if it is manifest that there is no evidence to support it. The two infirmities are separate and distinct though, conceivably, in some cases both may be present. **There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides…..**

"…….NOW, in this state of the evidence, how can it be said that the respondent even attempted to offer a bribe to Mr. Rajagopalan ? Mr.

Rajagopalan makes a definite statement that the respondent did not offer him a bribe. He merely refers to the fact that the respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr. Rajagopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr. Rajagopalan cannot, in law, be treated as evidence against the respondent even though there is no doubt that Mr. Rajagopalan is a straight-forward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney-General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No. 3 has been proved against the respondent……"(emphasis supplied)

69. In **Mohan Chandra Kalita**[8], the Supreme Court held thus:

"……..This enquiry into extraneous allegations with which the respondent was not charged must have certainly prejudiced the enquiry officer against the respondent. Even if we were to ignore this aspect, there is no evidence to connect the respondent with the allegation that he had authorised the collection of Garibhara much less can it be said, as averred in the charge, that he realised from those persons to whom compensation was being paid certain percentage of compensation money due to them for payment of hire charges of the vehicle in which he had visited the office of the Mauzadar from Dhekiajuli……

70. In **M/s. Bareilly Electricity Supply Co. Ltd**[9], the Supreme Court held:-

"……**BUT the application of principle of natural justice does not imply that what is not evidence can be acted upon.** On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used……."(emphasis supplied)

71. In **N. Venkatarama Naidu**[11], this Court held:-

"……It is not in dispute that the Parakamani area is a very important

place where the offerings of the devotees to the Lord are segregated and sealed in a separate boxes under the supervision of the Parakamani Officer, the petitioner. It is not the case that the petitioner left the place, when the entire Parakamani operations were in progress. It is only after an entire process was over and when a final sweeping was to take place for which Deepali was not available, at that point of time the petitioner left for calls of nature duly informing the other staff. I have also asked the learned counsel for Devasthanams to produce any Rules or instructions as to the arrangement which has to be made by the Parakamani Officer when he had to leave the place for short spells may be on account of calls of nature or otherwise. The learned counsel for the Devasthanams could not produce any such Rules, on the other had, he submitted that it is the duty of the petitioner to be at the Parakamani area irrespective of his personal inconvenience. As already noticed, the petitioner duly informed the subordinate staff, who were keeping a watch over the area. For watching the area need not be present in the area itself, it can be watched from the sides and corners. Therefore, simply because there was nobody present in the Parakamani arqa, when the video clipping was viewed by the Enquiry Officer, it cannot be said that there were no other employees supervising area. It is not as if the petitioner left the place once for all. But, on the other hand, he came back and got area swept, where certain left over items were collected in his presence. **Thus, I find that the findings of the Enquiry Officer are wholly perverse and consequently the disciplinary proceedings including the punishment are liable to be set aside……. (emphasis supplied)**

72. The question which, therefore, requires examination is as to whether the findings of the enquiry officer are based on no evidence and whether they are perverse for it is only if it is so held would interference of this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, be justified.

73. Sri J. Sudheer, learned counsel for the petitioner, would submit that the evidence recorded by the enquiry officer, that the petitioner had, with a fraudulent intention of deriving undue/unlawful benefit for himself, caused destruction/non-delivery of the said cheque issued by him, is a finding based on no evidence and is perverse. Learned counsel would submit that while the other charges relating to use of withdrawal slips pertaining to a closed SB account and issuing the cheque without

maintaining necessary balance in his savings bank account are, at best, minor violations, the substantial charge is of destruction/non-delivery of the cheque forwarded to the branch for collection by Bank of Baroda and in as much as there was no evidence on record to substantiate this charge, the findings recorded by the enquiry officer, that the petitioner had caused destruction/non-delivery of the said cheque issued by him earlier, is based on surmises and conjectures, is based on no evidence and is perverse. Learned counsel would submit that once this charge is held not to be established, there is no justification for the disciplinary authority to impose on the petitioner the major penalty of compulsory retirement from service and consequently the order of punishment is also liable to be set aside.

74. To examine this contention, it is necessary to take note of certain undisputed facts:-

(1) The petitioner had used the cheque leaves of S.B. Account No.71, altered it as S.B.2871 and had issued cheque No.698839 in favour of M/s Chunduri Chit Funds Private Limited.

(2) Both on 13.03.1997, when the cheque was issued and on 31.03.1997 when the cheque was received by the branch, (being forwarded to it for collection by Bank of Baroda), the balance in the S.B. account of the petitioner was insufficient to make payment of this cheque of Rs.13000/-. While the balance in the petitioner's S.B. account on 15.03.1997 was Rs.2.02, on 31.03.1997, the balance was Rs.81.06.

(3) On 31.03.1997 the registered post envelope, containing the cheque of Rs.13000/-, (sent by Bank of Baroda for collection), was received at the branch by the petitioner himself.

(4) On the petitioner initially denying knowledge of receipt of the cheque, the then branch manager had addressed a letter to M/s Bank of Baroda, on 09.05.1997, informing them of non-receipt of the cheque.

75. Before the enquiry officer, the petitioner contended that both cheque No. 698834 and the missing cheque No. 698839 formed part of the same cheque book relating to S.B. account No. 71 of Sri Y. Thirupathi Reddy and that cheque No. 698834 for Rs.28,100/- issued by the petitioner (MEX 2), was passed by the Manager. According to the petitioner, the Manager had full knowledge of the fact that these cheques were issued by the petitioner and therefore the charge of pilferage of cheques was without basis. According to the petitioner, cheque No. 698834 and 698839 were passed for payment by two different branch Managers and since the unused cheque leaves lying with the branch had been utilized by him and his correct S.B. account was reflected on the cheque, the petitioner could not be accused of having pilfered the cheque leaves.

76. In his letter dated 28.10.1997 (MEX 24), addressed to the Manager of Gotlagattu branch, the petitioner stated that it may be a fact that the registered cover might have been received by him but the contents thereof were not known to him because he had not seen so particularly and that the cover was handed over to the Manager intact without opening because Manager was not in the

branch at the time of the postman's visit to the branch, but the petitioner was aware that he would return after some time. The petitioner also stated that he stood as a guarantor to one of his close friends and that the said chit fund company, besides getting execution of the guarantee bond, had also obtained one signed blank cheque as a guarantee and, without prior intimation and notice, the chit fund company had presented the cheque by filling up the cheque to the extent of dues of that particular chit for which the petitioner had stood as a guarantor and had presented it for collection through their bankers, Bank of Baroda, Ongole under OBC 1596 dated 17.03.1997. The petitioner stated that he had visited the chit fund company as well as the Bank of Baroda, Ongole branch, had enquired with them and came to know that the proceeds of the cheque amount for Rs.13,000/- was earmarked for two vouchers prepared for adjustment of chit dues of his friend for which he stood as a guarantor and this was the main reason why he had not maintained sufficient balance in his S.B. account after issue of that cheque as he was not aware about their presenting the cheque and these facts could be got verified from the records of M/s. Chunduri Chit Funds (Pvt) Limited, Ongole. The petitioner expressed his concern both to his prestige and to the reputation of the institution and informed the Branch Manager of his total cooperation in resolving the matter and that he was going to credit Rs. 13,500/- to his S.B. account within a few days. Prior to this letter the petitioner was informed, vide letter dated 25.07.1997 (MEX 23), that on receiving a telegram from Bank of Baroda, Ongole on 08.05.1997, when the Manager had enquired about the matter, the petitioner had informed him that he had not received such a cover/instrument and basing on the information

given by the petitioner, the branch Manager had informed Bank of Baroda, Ongole on 09.05.1997 that they had not received the said OBC, the Bank of Baroda had enquired with the postal authorities and sent xerox copy of the acknowledgment given by the Branch on 31.03.1997 of having received the registered post cover. The said acknowledgment was given by the petitioner as the Manager had gone to remit income tax on that day. On verification by the Gotlagutta branch it was found that the cheque was not debited to the petitioner's account as there was insufficient balance from 15.03.1997 till date i.e., on 25.07.1997. Before the appellate authority, the petitioner contended that he had kept all registered posts/ordinary post covers on the Manager's table without opening the cover as per the practice of the Bank.

77. The prevaricating stand of the petitioner, from time to time, with regards receipt of the registered post cover containing OBC No. 1596 dated 17.03.1997, must be taken note of. While the petitioner initially denied having received the cover/instrument, (which resulted in the then Manager informing the Bank of Baroda accordingly), subsequently when a xerox copy of the postal acknowledgment containing his signature was forwarded to the Branch, and on enquiry, the petitioner stated that it may be a fact that he may have received the cover but the contents thereof were not known to him since he had not seen the cover and had handed it over to the Manager intact without opening. The petitioner again changed his stand and stated before the Appellate authority that he had merely kept the cover on the Manager's table. These varying statements of the petitioner would belie his earlier statement that he had handed over the cover intact to the Manager.

78. Sri Rami Reddy, learned Counsel, appearing for the

respondent Bank, would refer to Ex.MEX 27 i.e., the letter addressed by the petitioner on 28.11.1997, to the chit fund company, asking them to confirm the balance amount due. In the very same letter, the petitioner stated that he was sending a cheque for Rs.25,000/-, that as per the agreement Sri K. Chalapathi Rao had told him that he would present one cheque after the other because cash was not received by the petitioner and that he would give it within one week. The petitioner informed that the Bank was going to send Rs.14,000/- D.D. to the chit fund and requested the chit fund to confirm the balance. This Rs.14,000/- demand draft represented the Rs.13,000/- cheque issued earlier along with interest and other charges. Learned Counsel would submit that this letter is itself proof that it was the petitioner who had borrowed money from the chit fund company and that his contention, of being a mere guarantor, to have issued a blank cheque which was later filled up and encashed by the chit fund company, were all concocted only to wriggle out of the charges alleged against him.

79. The very fact that the branch manager had addressed a letter to M/s Bank of Baroda on 09.05.1997 informing that the cheque was not received by the branch would itself show that the branch manager had not received the cheque. The only person who stood to gain, by not forwarding the cheque, on its receipt to the accounts department of the Gotlagattu branch of the respondent bank, was the petitioner, for if the cheque had been presented for collection on that day it would have been dishonoured for want of sufficient balance in his S.B. Account. While it is true that strict rules of evidence are not applicable to

domestic enquiries, and the degree of proof required is preponderance of probabilities and not proof beyond reasonable doubt, even under the Section 106 of the Evidence Act, where any fact is especially within the knowledge of any person the burden of proving that fact lies on him. Having admitted, albeit belatedly, that he had received the registered letter containing the cheque on 31.03.1997, the burden of proof was on the petitioner to establish that he had handed over the registered cover intact to the branch manager, without opening it. In this context, it is useful to refer to **Canara Bank**[12], wherein the Allahabad High Court held thus:-

"…..Section 101 of Indian Evidence Act postulates that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on the person. The provisions of Sections 102, 103 and 106 of Evidence Act are also quoted with advantage.

"(102) On whom burden of proof lies:- The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side."

"(103) Burden of proof as to particular facts:- The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

"(106) Burden of providing fact especially within knowledge:- When any fact is especially within the knowledge of any person the burden of proving that fact is upon him.

The Labour Court has itself held that the procedure of enquiry was fair but the findings of the Enquiry Officer are perverse. This conclusion arrived at by the Labour Court is without any basis and without any material on record and is based on misconception of law applicable to the departmental enquiries. It appears that there was clear misconception in the mind of Labour Court in respect of standard of proof in departmental enquiry and burden of proof. As stated above the standard of proof in criminal trial and departmental enquiry is different. The burden of proof lies on those who fail if evidence is not led. In the instant case once charged, it was for the delinquent employee to prove that he was not guilty of misconduct but he miserably failed to do so."

80. The petitioner failed to discharge his burden to establish that he had handed over the registered letter intact to the branch

manager. He had changed his stand before the appellate authority and had stated that he had placed the registered letter on the table of the branch manager. On the other hand, the letter addressed by the branch manager to M/s Bank of Baroda, on 09.05.1997, informing them that the cheque had not been received at the branch, would itself show that the branch manager had not received the said cheque.

81. While it is true that the branch manager was not examined as a witness, it is clear from the evidence on record that a letter was addressed by him to Bank of Baroda on 09.05.1997. It is well settled that there is no prohibition, in departmental enquiry proceedings, from taking into consideration such evidence.

82. In **State of Haryana v. Rattan Singh**[35], failure on the part of a conductor of the Haryana State Road Transport Corporation to collect bus fares from 11 passengers and consequent termination of his service was questioned on the ground that none of the passengers had been examined in the domestic enquiry. In this context, the Supreme Court held thus:

"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there *some* evidence or was there *no* evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as

men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of *any evidence* in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record……."

83. In **J.D. Jain v. The Management of State Bank of India**[36], based on a verbal complaint from a savings bank account holder that, while he had withdrawn Rs.500/-, a debit entry of Rs.1500/- was shown in his pass book, disciplinary proceedings were initiated against the cashier to whom the said customer had given authorisation. On the basis of the verbal complaint of the customer, a charge sheet was issued against the cashier. The customer was not examined in the domestic enquiry. However, the officers to whom the customer had made the complaint were examined. Consequent upon his termination from service, the cashier approached the Industrial Tribunal and the Tribunal recorded a finding that failure to examine the complainant vitiated the enquiry proceedings and that hearsay evidence was not permissible. The Supreme Court held that strict rules of evidence were not applicable to domestic enquires and relying on its earlier judgment in **Rattan Singh**[35] held thus:

"The next question is, is the evidence in the domestic enquiry really hearsay, as held by the Tribunal?

The word "hearsay" is used in various senses. Sometimes it means whatever a person is heard to say; sometimes it means whatever a person declares on information given by someone else. (see *Stephen on Law of Evidence*)

The Privy Council in the case of *Subramaniam* v. *Public Prosecutor*,(1956)1 WLR 965) observed:

> "Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or some other persons in whose presence these statements are made."

In the instant case, the alleged misconduct of the appellant was that he forged

documents, withdrew Rs 1500 — Rs 1000 in excess of the amount he was authorised to do and misappropriated the excess amount of Rs 1000. With regard to the fact whether the appellant manipulated the documents, withdrew excess amount and misappropriated it, there is, of course, no direct evidence of any eyewitness except the appellant's 'confession' referred to above. The evidence on which reliance has been taken by the respondent is the confession and circumstantial evidence, namely, the authority letter containing the admitted interpolations by the appellant in his own handwriting in different ink, and the addition of the digit '1' before 500. The evidence of Kansal would have been primary and material, if the fact in issue were whether Kansal authorised the appellant to make the alterations in the authority letter. But Kansal's complaint was to the contrary. For the purpose of a departmental enquiry complaint, certainly not frivolous, but substantiated by circumstantial evidence, is enough. What the respondent sought to establish in the domestic enquiry was that Kansal had made a verbal complaint with regard to the withdrawal of excess money by the appellant in presence of the four witnesses, namely, Wadhera, Gupta, Ramzan and Sarkar, aforesaid, against his advice. On the complaint of Kansal, the evidence of these four witnesses is direct as the complaint is said to have been made by Kansal in their presence and hearing; it is therefore, not hearsay. As the respondent has succeeded in proving that a complaint was made by Kansal on the evidence of the above-named four witnesses, the respondent has succeeded. No rule of law enjoins that a complaint has to be in writing as insisted by the Tribunal."

84. Since the petitioner failed to discharge his burden of establishing that he had handed over the registered cover, containing the cheque, intact to the branch manager and it is not in dispute that the petitioner had received the cheque and it was he alone who had benefited by non-presentation of cheque for payment, (since there was insufficient balance in his S.B. Account to ensure that the cheque was honoured when it was presented for payment), the findings of the enquiry officer that the petitioner had caused non-delivery of the said cheque issued by him is a reasonable inference drawn from the evidence on record and cannot be said to be a finding based on surmises and conjectures/no evidence or to be perverse. As a result this charge must also be held to have been rightly established.

EVEN IF SOME OF THE SEVERAL CHARGES ARE HELD ESTABLISHED – NO INTERFERENCE IS CALLED FOR IN PROCEEDINGS UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA:

85. Even otherwise, it is not in dispute that the petitioner had

issued the cheque belonging to another S.B. account No.71 which was closed and that he had issued the cheque without sufficient balance, in his savings bank account. It is well settled that even if some of the several charges, leveled against the delinquent employee, are held to have been established this Court, in proceedings under Article 226 of the Constitution of India, would not interfere, if the punishment imposed is one which could have been imposed on the charges held established.

86. I n **State of Orissa V. Bidyabhushan**[37], the Supreme Court held thus:

".....Therefore if the order may be supported on any finding as to substantial misdemeanor for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction, if the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanor, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to reconsider the question....."

87. I n **Railway Board V. Niranjan Singh**[38], the Supreme Court held thus:

".....Before we take up for consideration Point No. 2 formulated above, it would be convenient to deal with Point No. 3. It was not disputed before us that the first charge levelled against the respondent is a serious charge and it would have been appropriate for the General Manager to remove the respondent from service on the basis of his finding on that charge. But we were told that we cannot assume that the General Manager would have inflicted that punishment solely on the basis of that charge and consequently we cannot sustain the punishment imposed if we hold that one of the two charges on the basis of which it was imposed is unsustainable. This contention cannot be accepted in view of the decision of this Court in State of Orissa v. Bidyabhushan Mohapatra, (1963)Suppl. (1) SCR 648= (AIR 1963 SC 779) wherein it was held that if the order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which the punishment imposed can lawfully be imposed it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment question....."

88. It is well settled that it is not for this Court in proceedings under Article 226 of the Constitution of India, to sit in appeal over the decision of the disciplinary authority with regards the punishment to be imposed for the misconduct held proved. The nature of punishment to be imposed, for proved misconduct, is in the employer's realm and it is only if the punishment is one which could not have been imposed at all or is one which shocks its conscience, would this Court, in proceedings under Article 226 of the Constitution of India, interfere. Since the charges leveled against the petitioner, have been held to have been proved/established, on the evidence on record, I see no reason to exercise discretion, under Article 226 of the Constitution of India, and interfere with the quantum of punishment.

89. The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

_____

Date: .06.2006 RAMESH RANGANATHAN, J

Note: L.R. copy to be marked.
B/o
ASP/MRKR

[1] 1998(2) ALT 598

[2] AIR 1970 SC 1255

[3] AIR 1997 SC 2148

[4] 1998(6) Supreme 587= AIR 1998 SC 3038

[5] 1991(1) LLJ 130

[6] 1998(1) ALT 501

[7] AIR 1964 SC 364

[8] AIR 1972 SC 2535

[9] AIR 1972 SC 330

[10] 1996(2) ALD 1160

[11] 1996(3) ALD 163

[12] 1998(2) LLJ 511

[13] (2005) 3 SCC 241

[14] (2003) 3 SCC 583

[15] 1967(2) LLJ 715

[16] 1971 (1) LLJ 83

[17] 1978(1) LLJ 443

[18] 1996(3) SCC 364

[19] AIR 1974 SC 1596

[20] AIR 1976 SC 2547

[21] AIR 1989 SC 1933

[22] 2002(4) SCC 234

[23] 1966 M.P.L.J. 26

[24] 1969 NSC 186

[25] AIR 1965 SC 155

[26] AIR 1984 SC 289

[27] 1969 (2) SCC 372

[28] 1981(II) ALT 455

[29] AIR 1954 SC 51

[30] AIR 1991 SC 1260
[31] AIR 1974 SC 555
[32] AIR 1977 SC 567
[33] AIR 1987 SC 2043
[34] (1990) 4 SCC 594
[35] AIR 1977 SC 1512
[36] AIR 1982 SC 673
[37] AIR 1963 SC 779
[38] AIR 1969 SC 966